IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.02.2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL REVISION CASE No.1878 OF 2004
and
Crl.M.P.No.11362 of 2004

R.Parameswaran ... Petitioner

Vs.

State, by
The Deputy Superintendent of Police
District Crime Branch
Coimbatore District
(Cr.No.120/04 on the file of
Kamanaickenpalayam Police Station) ... Respondent

* * *

Criminal Revision Case filed under Section 397 and 401 of the Cr.P.C.

* * *

For petitioner : Mr.P.M.Duraiswamy

For respondent :Mr.V.Jayaprakashnarayanan
Govt.Advocate (Crl. side)

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O R D E R

The above Criminal Revision Case is filed against the order dated 7.10.2004 made in Cr.M.P.No.3967 of 2004 by the Court of District Munsif-cum-Judicial Magistrate, Palladam.

2. The brief case of the petitioner is that on 10.5.2004 at about 8.30hrs one L.Jeganathan, lodged a complaint at Kamanaickenpalayam Police Station, Coimbatore District alleging that his brother-in-law Semalaipandaram and his friend Balasubramaniam @ Balan had died of consuming liquor; that the case was originally registered in Crime No.120/2004 under Section 174 Cr.P.C and subsequently, on investigation, it was altered into Section 304(A) I.P.C. on 29.5.2004; that the petitioner was arrested under Section 304(A) IPC on 30.6.2004; that the petitioner was subsequently released on bail by the Judicial Magistrate, Palladam; that the investigation was subsequently transferred from the Inspector of Police, Kamanaickenpalayam Police Station to the respondent as per the

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orders of the Superintendent of Police, Coimbatore; that again the offence was converted from Section 304(A) IPC to 302 IPC; that the respondent upon suspicion without any substantial materials and on the reason that offence under Section 302 IPC is triable excessively by the Court of Sessions, filed a petition under Section 437(5) Cr.P.C. before the learned Judicial Magistrate, Palladam to cancel the bail granted earlier to the petitioner and prayed for issuance of non-bailable warrant against the petitioner;that the learned Judicial Magistrate, after hearing both sides, cancelled the bail granted earlier to the petitioner and issued a Non-Bailable warrant against him and hence, the petitioner has come forward to file the above Criminal Revision Case against that order.

3. Today, when the above Criminal Revision Case was taken up for consideration the learned counsel for the petitioner would submit that the learned Magistrate has failed to see that there is no material available on record to convert the offence under Section 302 IPC; that once the accused had been granted bail, he cannot be arrested if the case is converted to a serious offence that provides severe punishment; that it is a settled proposition of law that an order of bail granted remains operative unless it is cancelled and merely because a case has been registered for an offence which is exclusively triable by Court of Sessions; that the only provision that can be resorted to for cancellation of bail is under Section 439(2) of Cr.P.c if the accused violates the terms and conditions of bail.

4. In support of his submission, the learned counsel for the petitioner would rely on the decision reported in Kalia @ Saroj Praharaj-vs- State of Orissa(2000(2) Crimes 331) wherein it is held by a learned single Judge of the Orissa High Court that

> "Coming to the case in hand, the offence with which the petitioner stood, prosecuted were initially registered under sections 341, 324 and 294 I.P.C. and the same being bailable learned Court below admitted him to bail. But since the case subsequently turned to be one under Section 302, I.P.C, learned S.D.J.M. cancelled his bail. Neither Section 436 nor any other provision of the 1973 Code provides that in such a situation the Court of the first instance which granted bail to the accused can cancel the bail and commit him to custody. The only provision that can be resorted to is Section 439 (2) under which power is conferred upon the High Court or the Court of Sessions, but not upon the Court of the first instance."

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On such arguments, the learned counsel for the petitioner would pray to revise the order of cancellation of bail passed

by the Court of the Judicial Magistrate, Palladam by his order dated 7.10.2004 made in Crl.M.P.No.3967 of 2004.

5. On the contrary, on the part of the respondent the learned Government Advocate (Crl. Side) would submit that once the Section that has been altered from that of bailable by the the Magistrate to that of the Court of Sessions, the lower court is perfectly right in cancelling the bail already granted for the commission of the offence under Section 304 (A) of I.P.C. and since now that Section itself is gone and the offence has been brought under Section 302 of I.P.C. and therefore in order to re-arrest the petitioner in the alteration of Section as a sessions case, unless the bail already granted for the commission of the offence under Section 304(A) is cancelled, the accused cannot be arrested and remanded for the commission of the Sessions offence by the Court of Sessions and hence the order of cancellation of the bail is justified. On such arguments, the learned Government Advocate (Crl. Side) would week to dismiss the above criminal revision case.

6. In Consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is of the view that in the above circumstances on the ground that on a further investigation the case registered under Section 304 (A) of I.P.C. triable by the Magistrate to the then existing circumstances. But on further investigation on new facts and circumstances it turned out to be a murder case punishable under Section 302 I.P.C. and though from the order cited supra passed by the learned single Judge of the Orissa High Court particularly from the paragraph extracted above, though the reason prevails so far as the cancellation of his bail is concerned, this Court is not in agreement of the same regarding the facts in the case in hand, the Section for the commission of the offence of which he was let on bail had become extinct and there is reason on the part of the learned Magistrate in cancelling the bail application that he had already granted. It is under that particular Section the F.I.R. was pending, thus facilitating the prosecuting authorities to initiate such steps to follow the procedures for the commission of the offence punishable under Section 302 of I.P.C. triable by the Sessions court in causing the arrest or remanding the accused and the Court considering the bail application if any filed etc., and therefore this Court does not feel it wrong on the part of the learned Judicial Magistrate in dismissing the bail already granted so far as the facts of the case in hand is concerned and hence the interference of this Court sought to be made into the same is neither necessary nor warranted and hence the following order.

In result,

(i) The above Criminal Revision Case No.1878 of 2004 does not merit acceptance but the same becomes liable to be dismissed and is dismissed accordingly;

(ii) The order passed by the Court of

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Judicial Magistrate, Palladam made in Cr.M.P.No.3967 of 2004 dated 7.10.2004 is confirmed;

(iii)Consequently, connected Crl.M.P.No.11362 of 2004 is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg/ks

Copy to:

1. The District Munsif -cum-Judicial Magistrate,
Palladam,Coimbatore District.

2. -do- Thro The Chief Judicial Magistrate,Coimbatore.

3.The Deputy Superintendent of Police
District Crime Branch,Coimbatore District.

4.The Public Prosecutor,
High Court, Madras

5.The Inspector of Police,
Kamanaickenpalayam Police Station,
Coimbatore District.

AG (Co)
km/7.2.

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